

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petitions of SBC ILECs and)	
VarTec Telecom, Inc. For)	WC Docket No. 05-276
Declaratory Ruling Regarding)	
The Application Of Access Charges)	
To IP-Transported Calls)	
_____)	

REPLY COMMENTS OF VONAGE HOLDINGS CORP.

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Dated: December 12, 2005

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Vonage Holdings Corp. (“Vonage”) by undersigned counsel and in response to the Commission’s Public Notice released September 26, 2005,¹ offers its Reply Comments on the Petitions for Declaratory Ruling filed by the SBC ILECs and VarTec Telecom, Inc. (“Petitions”).

In its comments, Verizon implies that the protocol conversion between IP terminals and TDM terminals is not eligible for the ESP exemption from access charges because such traffic is “directly analogous” to the end office analog-to-digital conversion prevalent in legacy networks that have converted to digital switching.²

Vonage has addressed this argument in other forums³ and is dismayed to see it looming again in this proceeding. Vonage first emphasizes that Verizon’s argument is not appropriate for this proceeding, and the Commission should ignore it, since the Commission has only requested comment on the Petitions as they relate to PSTN-to-PSTN “IP-in-the-middle” traffic. However,

¹ *Pleading Cycle Established for SBC’s and VarTec’s Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls*, WC Docket 05-276, Public Notice (Sept. 26, 2005).

² Verizon Comments at 5.

³ See, e.g. *Minnesota Pub. Utils. Comm’n v. Vonage Holdings Corp.*, Case No. 04-1434 (8th Cir. 2004).

out of an abundance of caution, Vonage believes it is essential to demonstrate the infirmity of Verizon's argument, using Vonage's DigitalVoice™ Voice Over IP service as an example.

Vonage's service is an Internet offering that, like e-mail, instant messaging, Internet conferencing, and other emerging services, permits customers to communicate over the Internet. Unlike traditional telephone service, Vonage customers are not connected to the PSTN. Rather, Vonage's service resides and is performed on the Internet. Its customers can only access the service over broadband Internet connections. Though Vonage's customers may use an ordinary telephone handset, that telephone is connected to a computer connected to the Internet, not the PSTN. This is not a difference only of semantics — the reason that "PSTN-to-PSTN" IP telephony has been treated as a basic service is not because of the use of telephone-style handsets, but because the service is offered by traditional common carriers, using their underlying transport facilities to offer pure transmission with no net change in form or content. Every call enters the network in the same format (TDM) as it exits; the carrier temporarily converts the format of the communication, but returns it to the original format before delivery. Thus PSTN-to-PSTN IP telephony does not produce a *net* protocol conversion characteristic of an information service.

The *AT&T Declaratory Order*⁴ illustrates the distinction between Vonage's service and "PSTN-to-PSTN" IP services. AT&T had configured portions of its network so that ordinary PSTN-to-PSTN calls were temporarily converted to IP during the transmission, but then re-converted back to PSTN format before being delivered to the called party. Neither party to the call used the Internet or IP facilities, used equipment other than that ordinarily used to access the

⁴ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 17 FCC Rcd 7457 (2004).

PSTN, nor even had any idea that the call was being carried for part of its distance in IP format.⁵ Unlike Vonage's service, which enables customers to use their Internet connection in a manner not otherwise possible, AT&T's service offered no new functionality to users. The Commission held that AT&T's "phone-to-phone" IP telephony service is a telecommunications service because it originates *and* terminates on the PSTN, uses only ordinary customer premises equipment with no enhanced functionality, and provides no net protocol conversion.⁶ Because Vonage's service does not meet any of these three criteria, the *AT&T Declaratory Order* is clearly inapplicable.

Verizon attempts to equate IP-enabled services with traditional voice services,⁷ but it is immaterial that Vonage's service may seem, superficially, to be similar to an ordinary voice telephone call. The FCC has recognized that "some enhanced services may do some of the same things that regulated communications services did in the past" and "are not dramatically dissimilar from basic services."⁸ However, consumers cannot complete Internet-to-PSTN calls without a net protocol conversion. While most Vonage customers understand that their Internet connection cannot otherwise be used to connect to the PSTN, the transparency of a protocol conversion has never been a basis to disregard the statutory framework that regulates information services differently from underlying transport.

Verizon believes that protocol conversions necessitated by the introduction of new technology are outside the ambit of the enhanced services definition.⁹ However, this exception applies "in circumstances involving no change in an existing service" within the telephone

⁵ *Id.* paras. 11-13.

⁶ *Id.* para. 1.

⁷ Verizon Comments at 6.

⁸ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 F.C.C.2d 384 (1980) ("Computer II").

⁹ Verizon Comments at 5 n. 8.

network of a single carrier, to maintain compatibility between user equipment and the network.¹⁰

It applies to the use of new technology to modify the means of delivering an existing basic service within a telephone network, not a new offering of a format conversion between two different networks. Vonage's service does not fall within this exception because it is a new service with previously unavailable capabilities. Consequently, it should not be confused with a traditional PSTN-to-PSTN service, and the Commission should resist all suggestions that the ESP exemption does not apply to any service involving a net IP protocol conversion.

In sum, this docket is limited to PSTN-to-PSTN services and the Commission should dismiss out of hand Verizon's suggestion that IP-PSTN services should be addressed in this proceeding. The Commission is examining the classification, and treatment, of IP-enabled services in its comprehensive rulemaking docket and that docket is the appropriate forum to resolve IP-PSTN traffic issues.

Respectfully submitted,

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¹⁰ *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act*, 11 FCC Rcd 21905, paras. 2, 16, 29; *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Report and Order, 2 FCC Rcd 3072 para. 70 (1987).